

**No. 258 CUTTACK, FRIDAY, FEBRUARY 11, 2005/ MAGHA 22, 1926**

The 24th January 2005

For the Second Party–Workman . . . Shri D. B. Nayak

## AWARD

The State Government in exercise of powers conferred by sub-section (5) of Section 12 read with clause (c) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947, have referred the matter in dispute to this Court in the Labour & Employment Department Memo. No. 8644(5)-L. E., dated the 18th July 1995 for adjudication and Award.

2. The terms of the reference may briefly be stated as follows :—

“Whether the termination of services of Shri Upendranath Mohanty, driver by Smt. Jaswant Kaur, the employer of vehicle No. OSC-9555 by way of refusal of employment with effect from the 10th April 1991 is legal and /or justified ? If not, what relief he is entitled to ?”

3. The brief facts giving rise to the present case are that workman Upendranath Mohanty was engaged as driver since 1964 by Smt. Jaswant Kaur, the employer of vehicle No. OSC-9555 (in short the management). He continued as such till the 9th April 1991 by driving different buses under the management. According to the workman, on the 10th March 1991 the vehicle bearing registration No. OSC-9555 belonging to the management driven by him while plying to Mandar in the district of Dhenkanal met with an accident as a result the bus was seized by police along with all the documents including his driving license. Subsequently the bus was released and it was repaired in the garage. Thereafter the workman wanted to join his duty with effect from the 10th April 1991 but he was terminated from service by way of refusal of employment. While refusing employment, according to the workman, the management had not given any notice or notice pay and retrenchment compensation and had thereby violated the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short the Act). Since the action of the management in terminating his service by way of refusal of employment with effect from the 10th April 1991 was illegal and unjustified, he has now prayed for his reinstatement in service with full back wages and other service benefits. Hence the reference.

4. The management on the other hand, entered appearance and filed its written statement opposing the claim of the workman. According to the management, the workman was not a regular employee and the management had not terminated his service at any point of time. It is specifically averred in the written statement that the aforesaid vehicle met with an accident on the 14th October 1990 and a case was registered at Tangi Police Station vide Station Diary Entry No. 254, date of the 14th October 1990. Due to such accident the said vehicle was damaged and it remained in the garage for repair for a considerable time till the 1st March 1991. Again the workman while driving the aforesaid vehicle met with another accident on the 10th March 1991 rendering the said vehicle unserviceable due to severe damage caused to it. The said vehicle remained in the garage for repair till the 12th January 1993. On 13th January 1993 the said vehicle was transferred to one Santilata Mohapatra of Hazari Lane, Cuttack. According to the management, the workman had never been appointed as a regular driver by the management at any point of times for driving the said bus. Since he was

never in regular employment and when the said vehicle was transferred to the aforesaid Santilata Mohapatra, the question of termination by the management does not arise and the claim already made by the workman is not tenable in the eye of law. On the above backgrounds the rejection of the claim of the workman has been prayed for by the management under the present reference.

5. On the basis of the above pleadings of the parties, the following issues have been framed :

#### ISSUES

- (i) Whether the termination of services of the second party workman by the first-party management by way of refusal of employment with effect from the 10th April 1991 is legal and/or justified ?
- (ii) If not, to what relief the workman is entitled ?

6. The workman in support of his case has examined one Debaraj Moharana and Rishinath Lenka as W. Ws. 1 and 2 respectively but has not relied upon any document. On the other hand, the management has neither examined any witness nor relied upon any document in support of its case.

#### FINDINGS

7. *Issue Nos. (i) and (ii)*— For better appreciation and adjudication of the dispute under reference, both the above issues are taken up together.

At the outset I would like to mention herewith that although the workman has examined two witnesses in support of his case but he has not examined himself in the present case. No such reasonable explanation has been offered by the workman with regard to his non-examination in the present case. The non-examination of the workman himself in the present case leaves room to entertain doubt about his claim already averred in his statement of claim. Although both W. Ws. 1 and 2 in their evidence have clearly stated regarding the engagement of the workman under the management as a driver but their evidence with regard to the claim of the workman would no way be helpful to the case of the workman since he (workman) has not examined himself in the present case. I have stated earlier that no reasonable explanation has been offered by the workman relating to his non-examination in the present case. In that view of the matter the non-examination of the workman himself clearly leads me to arrive at a just conclusion that the workman has miserably failed to substantiate his own case. That apart no documentary evidence is placed before me to prove and establish that the workman had in fact worked under the management and that the management had terminated his service by way of refusal of employment with effect from the 10th April 1991. Although sufficient opportunities have been given to the workman for his examination but he failed to examine himself and the reason is best known to him. Besides, the requirement of the statute of 240 days can not be disputed and it is for the employee concerned to prove that he has in fact completed 240 days in the last preceding 12 months period in the event of any denial of such a factum. But in absence of any evidence of the workman it can not be definitely said that the management had illegally terminated the services of the workman by way of

refusal of employment with effect from the 10th April 1991. Under the above premises, I am of the opinion that the workman has not at all substantiated his own claim under the present case. In that view of the matter it would be not wise in the interest of justice to answer the reference at present in absence of the evidence of the workman. The reference is therefore disposed of accordingly with the above observation.

Dictated and corrected by me.

P. K. SAHOO  
29-9-2004  
Presiding Officer  
Labour Court, Bhubaneswar

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Presiding Officer  
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By order of the Governor  
D. MISHRA  
Under-Secretary to Government